

BELINDA M. VEGA (S.B. #208236)
bvega@omm.com
ALEJANDRO N. MAYORKAS (S.B. #122447)
amayorkas@omm.com
GRANT B. GELBERG (S.B. #229454)
ggelberg@omm.com
ALISON A. FISCHER (S.B. #249030)
afischer@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

Attorneys for Defendant
ADT Security Services, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

People of the State of California,

Plaintiff,

v.

ADT Security Services, Inc.,

Defendant.

Case No.

**NOTICE OF REMOVAL OF
DEFENDANT ADT SECURITY
SERVICES, INC.**

PLEASE TAKE NOTICE that Defendant ADT Security Services, Inc. ("ADT") hereby removes the above-captioned action from the Superior Court of the State of California in and for the County of Contra Costa, to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. In support of its removal, ADT respectfully states as follows:

1. On February 25, 2008, People of the State of California ("Plaintiff") commenced this action in the Superior Court of the State of California in and for the County of Contra Costa, against ADT, captioned *People of the State of California v. ADT Security Services, Inc.*, No. MSC08-00437. A true and correct copy of Plaintiff's Complaint ("Compl.") is attached as Exhibit A. ADT was served with a copy of the

1 Complaint on March 26, 2008. Accordingly, this Notice of Removal is timely filed
2 pursuant to 28 U.S.C. § 1446(b).

3 2. Venue is proper in this Court pursuant to 28 U.S.C. § 84(a), because
4 it is the “district and division embracing the place where such action is pending.” *See* 28
5 U.S.C. § 1441(a).

6 3. This action concerns the contracts entered into by ADT and ADT’s
7 authorized dealers with California customers for burglary monitoring and other alarm
8 monitoring services. Plaintiff asserts eight causes of action, seeking civil penalties, a
9 preliminary and permanent injunction, and restitution for various alleged violations of the
10 Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601 et seq., Sections 17200, 17203, 17500
11 and 7599.54 of the California Business and Professions Code, and Sections 1803.3,
12 1671(d), and 1689.7(a)(1) of the California Civil Code.

13 4. TILA is a federal statute which regulates the practices of merchants
14 in the extension of credit to retail customers and requires uniform disclosure of credit
15 information to consumers to enable them to make informed purchasing decisions. *See*
16 *Mourning v. Family Publ’ns Serv., Inc.*, 411 U.S. 356, 363-66 (1973).

17 5. The Supreme Court has recognized that federal question jurisdiction
18 exists over claims that are asserted under state law if the state law claims implicate
19 substantial federal questions. *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*,
20 545 U.S. 308, 314-15 (2005). As the Supreme Court explained in *Grable*, the test for
21 whether a case warrants federal jurisdiction under this doctrine is whether the “state-law
22 claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a
23 federal forum may entertain without disturbing any congressionally approved balance of
24 federal and state judicial responsibilities.” *Id.* at 314.

25 6. For its eighth cause of action, Plaintiff asserts a violation of Section
26 17200 of California Business and Professions Code, based on allegations that the
27 contracts ADT entered into with California customers, both directly and through its
28 authorized dealers, are in violation of TILA for failing to clearly and conspicuously

1 disclose certain information such as the total sale price, the payment schedule, any late
2 charges that may be imposed, as well as a statement referring customers to the appropriate
3 document for information about nonpayment and default. (Compl. ¶¶ 60-66).

4 7. This Court has federal question jurisdiction over this matter pursuant
5 to 28 U.S.C. § 1331 because Plaintiff must establish that ADT violated TILA in order to
6 prevail on its state law claims. *See Peterson v. Wells Fargo Bank*, 556 F. Supp. 1100,
7 1104-05 (N.D. Cal. 1981) (“[T]he federal questions are the essential and pivotal elements
8 of plaintiff’s cause of action because the state statute [California Business and Professions
9 Code § 17200] merely provides an alternative, if not cumulative, remedy for a violation of
10 a federal statute.”)

11 8. The threshold legal question this Court must address before rendering
12 judgment on the eighth cause of action is central to the current dispute and involves an
13 interpretation of the federal statute at issue: whether contracts that require recurring
14 payments should be treated as “credit sales” pursuant to TILA. *See* 15 U.S.C. § 1602(g);
15 12 C.F.R. § 226.2(a)(16). Specifically, this Court must decide based on the allegations in
16 the Complaint, the purely legal issue of whether TILA governs ADT’s contracts.

17 9. This federal question is substantial because it appears to be an issue
18 of first impression, the resolution of which “would be controlling in numerous other
19 cases” attempting to apply TILA to consumer contracts with ongoing payments. *In re*
20 *Nat’l Sec. Agency Telecomms. Records Litig.*, 483 F. Supp. 2d 934, 941 (N.D. Cal. 2007)
21 (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 681 (2006)).

22 10. Moreover, “permitting [this case] to proceed in federal, rather than
23 state, court will not ‘disturb[] any congressionally approved balance of federal and state
24 judicial responsibilities.’” *Id.* at 943 (quoting *Grable*, 545 U.S. at 314); *see also County*
25 *of Santa Clara v. Astra USA, Inc.*, 401 F. Supp. 2d 1022, 1029 (N.D. Cal. 2005) (finding
26 no disturbance of the balance of judicial responsibilities in deciding Section 17200 cases,
27 because they “are already endemic in federal court.”). Indeed, Congress created a private
28 right of action to allow creditors to bring claims for alleged TILA violations in “any

1 United States district court.” 15 U.S.C. § 1640(e); *see Grable*, 545 U.S. at 317 (finding
2 the existence of federal cause of action a “sufficient condition for federal-question
3 jurisdiction.”).

4 11. Plaintiff’s remaining causes of action are claims over which this
5 Court may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a),
6 because they form part of the same case or controversy as the claims over which this
7 Court would have original jurisdiction. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*,
8 *et al.*, 545 U.S. 546, 566 (2005); *Astra USA*, 401 F. Supp. 2d at 1025.

9 12. ADT will promptly file a true and correct copy of this Notice of
10 Removal with the Clerk of the Court for the Superior Court of the State of California in
11 and for the County of Contra Costa, and serve plaintiff with a true and correct copy of this
12 Notice of Removal, in accordance with 28 U.S.C. § 1446(d).

13
14 WHEREFORE, ADT respectfully removes this action from the Superior Court of
15 the State of California in and for the County of Contra Costa, to this Court pursuant to 28
16 U.S.C. § 1441.

17 Dated: April 25, 2008

18
19 BELINDA M. VEGA
20 ALEJANDRO N. MAYORKAS
21 GRANT B. GELBERG
22 ALISON A. FISCHER
23 O’MELVENY & MYERS LLP

24 By: Belinda Vega
25 Belinda M. Vega
26 Attorneys for Defendant
27 ADT Security Services, Inc.
28

ROBERT J. KOCHLY, District Attorney
County of Contra Costa
Lauren R. Wixson, Deputy District Attorney, SB#117178
627 Ferry Street
Martinez, CA 94553-0125
Telephone: 925.646.4532
Facsimile: 925.646.4683
Attorneys for Plaintiff

FILED

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K. THOMAS, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY: S. KATONIS, Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
MARTINEZ

People of the State of California,
Plaintiff,
vs.
ADT SECURITY SERVICES, INC.,
Defendant

Case No. C-08-00437

COMPLAINT FOR CIVIL PENALTIES,
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF, AND RESTITUTION

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 09

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Robert J. Kochly,
District Attorney of the County of Contra Costa, allege as follows:

1. Robert J. Kochly, District Attorney of Contra Costa County, acting to protect the
consumers of this State and County, brings this action in the public interest, in the name of the
People of the State of California.

2. The authority of the District Attorney of Contra Costa County is derived from the
statutory law of the State of California, including, but not limited to, Business and Professions
Code sections 17203, 17204, 17206, and 17500.

3. Plaintiff is informed and believes and thereupon alleges that Defendant, ADT
SECURITY SERVICES, INC. (hereinafter, "ADT"), is a Delaware corporation which does and
has done business in Contra Costa County and throughout California.

4. The violations of law described in this complaint have been carried out from as early

1 as January 1, 2002 to the present in the County of Contra Costa and elsewhere in the State of
2 California.

3 5. Plaintiff and Defendant ADT have entered into a series of agreements to toll any
4 applicable statute of limitations. As a result of these agreements, the period of time from
5 October 14, 2005 through December 31, 2007 will not be included in computing any time
6 limited by any statute of limitations under the causes of action against Defendant ADT that may
7 arise out of claims covered by the tolling agreement. Those claims include the claims that are
8 brought in this action against Defendant ADT.

9 6. Whenever an allegation regarding any act of the Defendant is made herein, such
10 allegation shall be deemed to mean Defendant, or the agents, employees, officers, or directors of
11 said Defendant, did or authorized such acts while actively engaged in the affairs of the Defendant
12 and while acting within the scope and course of their employment or agency.

13 7. Plaintiff is informed and believes and thereupon alleges that from January 1, 2002 to
14 the present, Defendant has engaged and is engaging in the business of selling home security
15 services and equipment, burglar alarms, monitoring services, and related goods and services to
16 consumers in this state.

17 8. Plaintiff is informed and believes and thereupon alleges that the aforementioned goods
18 and services are sold directly by ADT or indirectly through a network of ADT authorized
19 dealers. All direct and indirect sales involve written contracts and all involve the purchase of
20 goods or services in the amount of twenty-five dollars or more. All of the contracts entered into
21 directly or indirectly between ADT and consumers in this state are executed in the homes of
22 these consumers and are home solicitation contracts or offers as defined in section 1689.5 of the
23 California Civil Code.

24 FIRST CAUSE OF ACTION

25 (Business and Professions Code Section 17206 – Direct Contracts)

26 9. Plaintiff is informed and believes and thereupon alleges that Defendant utilizes a
27 “form” contract or adhesion contract in its direct sales to California consumers of monitoring
28 services, including burglary monitoring services, fire alarm, smoke detection, and carbon

1 monoxide monitoring, police emergency services, and related monitoring services. The wording
2 of this adhesion contract has changed in some respects since January of 2002.

3 10. Plaintiff is informed and believes and thereupon alleges that contracts entered into by
4 ADT with California consumers in its direct sales of burglary monitoring and related monitoring
5 services during the last four years provide in boilerplate language that the "initial term" of the
6 contract shall be for at least two years. After the expiration of the initial two year term, the
7 contract provides that service continues on a month to month basis, with either party having the
8 right to terminate the contract upon 30 days written notice.

9 11. Plaintiff is informed and believes and thereupon alleges that one form of direct ADT
10 adhesion contract is entitled, "Residential Services Contract (California)" and is contract form
11 number F5105-04(1/05). This form of contract has been used by ADT in California within the
12 last four years. Page 1 of 4 of the contract is the only page which has a place for the consumer's
13 signature and which has blanks to be filled in with information pertaining to the particular
14 consumer who is purchasing the goods and services from ADT. Two other pages (page 3 of 4,
15 located on the back of page 1 of 4, and page 4 of 4) contain 28 paragraphs of "boilerplate"
16 pertaining to additional terms and conditions. There is also an unnumbered page, front and back,
17 which contains the title of the document, the table of contents, and a list of additional products
18 and services available from ADT. It contains a blank space for the date of the contract and the
19 name and telephone number of the ADT sales representative.

20 12. Plaintiff is informed and believes and thereupon alleges that contract form number
21 F5105-04(1/05) has a section, section 2, on page 1 of 4, which specifies services to be provided
22 to the consumer. This section sets forth the total monthly service charge for burglary monitoring
23 and related monitoring services. The total amount of fees due each month for such services is
24 handwritten in the space provided on the contract form at the time the contract is entered into by
25 the consumer. This form also has a section 3 which specifies the equipment to be installed and
26 the prices for that equipment.

27 13. Plaintiff is informed and believes and thereupon alleges that contract form number
28 F5105-04(1/05) provides in boilerplate paragraph number 1, on the page numbered 3 of 4

(located on the back page of page 1 of 4), that the initial contract term is for two years. The paragraph states that the contract will automatically renew after the initial two year term for a period of thirty days unless terminated by either party upon 30 days written notice. There is no statement on page 1 of 4 which informs the consumer that the contract is for two years.

14. Plaintiff is informed and believes and thereupon alleges that contract form number F5105-04(1/05) has no space in section 2 or any place else on the contract form for the sum total of all payments required to be made for burglary monitoring and related services during the initial two year term of the contract.

15. Plaintiff is informed and believes and thereupon alleges that none of the contracts entered into since January 1, 2002 by ADT with California consumers in its direct sales of burglary monitoring and related monitoring services set forth the sum total of all monthly service charges required to be paid by the consumer during the initial term of years of each contract.

16. Plaintiff is informed and believes and thereupon alleges that the vast majority of the aforementioned direct contracts between ADT and consumers require more than four installment payments by the consumer during the initial term of the contract.

17. Plaintiff is informed and believes and thereupon alleges that the contracts between ADT and consumers in this state executed since January 1, 2002 for burglary monitoring and related services, to the extent that they require more than four installment payments, are retail installment contracts as defined in section 1802.6(b) of the Civil Code.

18. Plaintiff is informed and believes and thereupon alleges that section 1803.3 of the Civil Code requires, among other things, that the total of all payments, or the total cash price for the goods or services purchased, be disclosed on any retail installment contract.

19. Plaintiff is informed and believes and thereupon alleges that contract form number F5105-04(1/05), as well as other forms used within the last four years, contains a boilerplate paragraph on the back of page one (page 3 of 4), indistinguishable from the other boilerplate paragraphs on the back of page one, which provides that the consumer agrees to pay \$450.00 to ADT if the consumer terminates the contract at any time during the first of the two years of the initial term. This paragraph further provides that the consumer agrees to pay \$200.00 to ADT if

1 the consumer terminates the contract at any time during the second of the two years of the initial
2 term. Thus, the consumer who terminates the contract in the eleventh month must pay the same
3 early termination fee (\$450) as the consumer who terminates in the second month of the contract,
4 while the consumer who terminates in the thirteenth month pays the same early termination fee
5 (\$200) as the consumer who terminates in the twenty-third month of the contract.

6 20. Plaintiff is informed and believes and thereupon alleges that contracts entered into
7 since January 1, 2002 by ADT with California consumers in its direct sales of burglary
8 monitoring and related monitoring services provide in boilerplate language that the consumer
9 agrees to pay an early termination fee should the consumer terminate the contract prior to the
10 expiration of the initial term of years of the contract and that, in some cases, the early
11 termination fees charged or collected by ADT exceeded the amount due on a monthly basis for
12 the remainder of the initial term.

13 21. Plaintiff is informed and believes and thereupon alleges that ADT has charged,
14 collected, and attempted to collect these early termination fees from consumers who have
15 terminated their direct contracts with ADT prior to the conclusion of the "initial term" of their
16 contracts, whether or not the termination was caused by a breach of contract by ADT or by the
17 consumer. Plaintiff further alleges on information and belief that, in some cases, consumers
18 have been charged or have paid more in early termination fees than they would have paid had
19 they simply paid the monthly charges, with or without service, through the end of the initial term
20 of their direct contract with ADT.

21 22. Plaintiff is informed and believes and thereupon alleges that the boilerplate contract
22 provisions referred to in paragraphs 19 through 21 above - which require the consumer to pay an
23 early termination fee if the consumer terminates the contract during the initial term of the
24 contract - are void as being liquidated damages provisions in violation of section 1671(d) of the
25 Civil Code.

26 23. Plaintiff is informed and believes and thereupon alleges that contracts entered into
27 since January 1, 2002 by ADT with California consumers in its direct sales of burglary
28 monitoring and related monitoring services provide in boilerplate language that ADT has the

1 right to increase the annual service charge at any time after the first year of the initial term of the
2 contract. For example, paragraph 3 on the back of page 1 of 4 of contract form number
3 F5105-04(1/05) provides in part, that "We have the right to increase the annual service charge at
4 any time after the first year."

5 24. Plaintiff is informed and believes and thereupon alleges that during the period
6 encompassed by this Complaint, ADT raises and has raised the service charge amount billed to
7 consumers during the initial term of its contracts for burglary monitoring and related services
8 with consumers in this state, despite the fact that a lower monthly service charge, in dollars per
9 month, is set forth on the first page of the contract which is signed by the consumer.

10 25. Plaintiff is informed and believes and thereupon alleges that ADT does not disclose,
11 either verbally or in writing, at the time a consumer signs the direct contract with ADT, the
12 amount by which the monthly service charge will be increased during the initial term of the
13 contract, the date, within the initial contract term, on which the increase in the monthly rate will
14 take effect, nor the increase in the total amount due, over the period of the initial term, because
15 of the increase in the monthly service charge.

16 26. Plaintiff is informed and believes and thereupon alleges that ADT has collected,
17 collects, and attempts to collect these increased monthly service charges during the initial term of
18 its direct contracts with consumers.

19 27. Plaintiff is informed and believes and thereupon alleges that because of the manner in
20 which the price for the monthly service charge is presented on ADT contract forms and the
21 manner in which the language regarding the "right" of ADT to increase that monthly rate is set
22 forth on that form, reasonable consumers entering into such contracts are likely to be deceived as
23 to the true cost of the monthly service during the initial contract term and the true cost of the
24 total of payments required to be made over the initial term of the contract that they are entering
25 into with ADT.

26 28. Plaintiff is informed and believes and thereupon alleges that the failure of ADT to
27 disclose the sum total of all required installment payments due during the initial term of its
28 contracts for burglary monitoring and related services with consumers in this state; the actions of

ADT of including void liquidated damage provisions in its direct consumer contracts as specified above and in collecting and attempting to collect such liquidated damages and early termination fees from consumers who terminate their contracts prior to the conclusion of the initial contract term; and the actions of ADT of unilaterally raising the contract monthly service charge to consumers during the initial contract term, failing to disclose the amount of the increase in the monthly service charge at the inception of the contract, attempting to collect that increased monthly fee, and deceptively presenting the contract rate and cost information on the contract forms; as alleged in paragraphs 8 through 27 above, are unfair, unlawful, and fraudulent business acts and practices, are acts and practices in violation of sections 1803.3 and 1671(d) of the Civil Code and section 7599.54 of the Business and Professions Code, and are therefore acts of unfair competition in violation of section 17200 of the Business and Professions Code of the State of California. Defendant is liable pursuant to section 17206 of the Business and Professions Code to pay a civil penalty of up to two thousand, five hundred dollars (\$2,500.00) per violation per day.

SECOND CAUSE OF ACTION

(Business and Professions Code Section 17536 – Direct Contracts)

29. Plaintiff realleges and incorporates by reference as though set forth in full herein Paragraphs 8 through 27 of this Complaint.

30. Plaintiff is informed and believes and thereupon alleges that the failure of ADT to disclose the sum total of all required installment payments due during the initial term of its contracts for burglary monitoring and related services with consumers in this state, the actions of ADT of failing to conspicuously disclose to consumers the liquidated damage and early termination fee provisions in its direct contracts and in collecting and attempting to collect such liquidated damages and early termination fees from consumers who terminate their dealer contracts prior to the conclusion of the initial contract term; and the actions of ADT of unilaterally raising the contract monthly service charge to consumers during the initial contract term, failing to disclose the amount of the increase in the monthly service charge at the inception of the contract, attempting to collect that increased monthly fee, and deceptively presenting the

contract rate and cost information on the contract forms, as alleged in paragraphs 8 through 27 above, constitutes false and misleading advertising, in violation of section 17500 of the Business and Professions Code of the State of California. Defendant is liable pursuant to section 17536 of the Business and Professions Code to pay a civil penalty of up to two thousand, five hundred dollars (\$2,500.00) per violation per day.

THIRD CAUSE OF ACTION

(Business and Professions Code Section 17203 – Direct Contracts)

31. Plaintiff realleges and incorporates by reference as though set forth in full herein Paragraphs 8 through 27 and 30 of this Complaint.

32. Plaintiff is informed and believes and thereupon alleges that the practices of ADT as alleged in paragraphs 8 through 27 and 30 above, are unfair and unlawful business acts and practices, and are therefore acts of unfair competition in violation of sections 17200, 17203, and 17206 of the Business and Professions Code of the State of California. Pursuant to section 17203 of the Business and Professions Code, Defendant should be ordered to pay restitution to all victims of its unlawful and unfair business practices, to state the sum total of all monthly service charges required to be paid during the initial term of years of each contract entered into with California consumers, to discontinue all contract provisions providing for liquidated damages and termination fees payable by consumers, to cease collecting liquidated damages and termination fees from consumers, and to cease raising monthly fees of consumers who are still in the initial term of their contracts with Defendant, unless at the time the contract is executed by the consumer, the proposed future increase in monthly fees is disclosed, conspicuously in writing, to each consumer, and is included in the sum of the total of all monthly service charges required to be paid over the initial term of each contract.

FOURTH CAUSE OF ACTION

(Business and Professions Code Section 17206 – Dealer Contracts)

33. Plaintiff is informed and believes and thereupon alleges that the authorized dealers (dealers) in ADT's network of authorized dealers are agents of Defendant with respect to the sales in this state of Defendant's monitoring services, including burglary monitoring services,

1 fire alarm, smoke detection, and carbon monoxide monitoring, police emergency services, and
2 related monitoring services.

3 34. Plaintiff is informed and believes and thereupon alleges that most contracts entered
4 into between the ADT authorized dealers and California consumers with respect to the sales in
5 this state of Defendant's monitoring services are subsequently assigned to ADT, and ADT
6 provides the monitoring services and collects the payments made by consumers.

7 35. Plaintiff is informed and believes and thereupon alleges that Defendant requires and
8 has required its dealers to utilize a "form" contract or adhesion contract in the dealers'
9 sales to California consumers of ADT's burglary monitoring and related monitoring services.
10 The required form contract has changed in some respects since January of 2002. One such form
11 of dealer contract, used during the time period encompassed by this Complaint, is entitled,
12 "Alarm Services Agreement" and is form number F5124-00(Rev.5-02). Another such form of
13 dealer contract, used since on or about April of 2005, is entitled "Alarm Services Contract" and
14 is form number F5124-01(rev. 08/04).

15 36. Plaintiff is informed and believes and thereupon alleges that the form adhesion
16 contracts required by ADT for use by its dealers, and entered into between the dealers and
17 California consumers since January of 2002, provide in boilerplate language that the initial term
18 of the contract shall be for three years.

19 37. Plaintiff is informed and believes and thereupon alleges that none of the contract
20 forms used by ADT authorized dealers since January of 2002, including form number F5124-
21 00(Rev.5-02) and form number F5124-01(rev. 08/04), have a space on the contract form for the
22 sum total of all periodic payments required to be made for burglary monitoring and related
23 services during the initial three year term of the contract.

24 38. Plaintiff is informed and believes and thereupon alleges that the form adhesion
25 contracts required by ADT for use by its dealers, and entered into between the dealers and
26 California consumers since January of 2002, have a space for the monthly charge for burglary
27 monitoring and related services. The total amount of fees due each month for such services is
28 handwritten in the space provided on the contract form at the time the contract is entered into by

1 the consumer.

2 39. Plaintiff is informed and believes and thereupon alleges that none of the contracts
3 executed between ADT authorized dealers and consumers since January of 2002 state the sum
4 total of the monthly or other periodic payments required to be made by consumers during the
5 initial three year term of the contract.

6 40. Plaintiff is informed and believes and thereupon alleges that the ADT required form
7 contracts entered into between the dealers and California consumers since January of 2002,
8 provide in substance, that if the consumer terminates the contract during the three years of the
9 initial term, the consumer will pay 75% of the remaining amount due for that three year initial
10 term. For example, form number F5124-00(Rev.5-02), contains barely readable boilerplate
11 language on the back of the first page of the contract, indistinguishable from the other barely
12 readable boilerplate paragraphs on that page, that if the consumer is in default under the contract
13 or attempts to terminate the contract during the initial term, ADT may "declare immediately due
14 and payable an amount equal to 75% of the fees to be paid ... during the remaining term (initial
15 or renewal)" of the contract. Form number F5124-01(rev. 08/04) contains a boilerplate
16 paragraph on the back of page one, indistinguishable from the other boilerplate paragraphs on the
17 back of page one, which provides in eight or nine point type as follows: "EARLY
18 TERMINATION. YOU AGREE THAT THE CHARGES DUE UNDER THIS CONTRACT
19 ARE BASED ON YOUR AGREEMENT TO RECEIVE AND TO PAY FOR THE SERVICES
20 FOR THREE (3) FULL YEARS. ACCORDINGLY, YOU AGREE THAT: IF YOU
21 TERMINATE THIS CONTRACT DURING ITS INITIAL TERM, YOU WILL PAY US
22 AN AMOUNT EQUAL TO 75% OF THE CHARGES TO BE PAID BY YOU DURING THE
23 REMAINING INITIAL THREE (3) YEAR TERM OF THIS CONTRACT. THIS AMOUNT IS
24 AGREED UPON DAMAGES AND IS NOT A PENALTY."

25 41. Plaintiff is informed and believes and thereupon alleges that ADT has collected and
26 attempted to collect these early termination fees from all consumers who have terminated their
27 contracts with ADT prior to the conclusion of the initial three year contract term of their
28 contracts, whether or not the termination was caused by a breach of contract by ADT or by the

1 consumer.

2 42. Plaintiff is informed and believes and thereupon alleges that the boilerplate contract
3 provisions referred to in paragraphs 40 through 41 above - which require the consumer to pay an
4 early termination fee if the consumer terminates the contract during the initial term of the
5 contract – are void as being liquidated damages provisions in violation of section 1671(d) of the
6 Civil Code.

7 43. Plaintiff is informed and believes and thereupon alleges that most of the contracts
8 entered into between the dealers and California consumers since January of 2002 for burglary
9 monitoring and related services require more than four installment payments by the consumer
10 during the initial term of the contract.

11 44. Plaintiff is informed and believes and thereupon alleges that the contracts entered into
12 between the dealers and California consumers since January of 2002 for burglary monitoring and
13 related services, to the extent that they require more than four installment payments, are retail
14 installment contracts as defined in section 1802.6(b) of the Civil Code.

15 45. Plaintiff is informed and believes and thereupon alleges that section 1803 of the Civil
16 Code requires, among other things, that the total of all payments, or the total cash price for the
17 goods or services purchased, be disclosed on any retail installment contract.

18 46. Plaintiff is informed and believes and thereupon alleges that all contracts entered into
19 between the dealers and California consumers since January of 2002 for burglary monitoring and
20 related services provide in boilerplate language that the annual service charge may be increased
21 at any time after the first year of the initial term of the contract. For example, contract form
22 number F5124-00(Rev.5-02) provided as follows: “Dealer shall have the right annually to
23 increase the rates charged for Services after the first year of the Initial Term or during any
24 Renewal Term without notice to Subscriber.” Form number F5124-01(rev. 08/04) provides, in
25 part, on the second page of the contract: “INCREASES IN CHARGES. We have the right to
26 increase the annual service charge at any time after the first year.”

27 47. Plaintiff is informed and believes and thereupon alleges that ADT raises and has
28 raised the service charge amount billed to consumers during the initial term of these dealer

1 contracts for burglary monitoring and related services with consumers in this state, despite the
2 fact that a lower monthly service charge, in dollars per month, is set forth on the first page of the
3 contract which is signed by the consumer.

4 48. Plaintiff is informed and believes and thereupon alleges that neither the dealers nor
5 ADT disclose, either verbally or in writing, at the time the consumer signs the dealer contract,
6 the amount, if any, by which the monthly service charge will be increased during the initial
7 contract term.

8 49. Plaintiff is informed and believes and thereupon alleges that ADT has collected and
9 attempted to collect these increased monthly service charges during the initial term of the dealer
10 contracts with consumers.

11 50. Plaintiff is informed and believes and thereupon alleges that because of the manner in
12 which the price for the monthly service charge is presented on ADT dealer contract forms and
13 the manner in which the language regarding the "right" of ADT to increase that monthly rate is
14 set forth on that form, reasonable consumers entering into such contracts are likely to be
15 deceived as to the true cost of the monthly service during the initial contract term and the true
16 cost of the total of payments required to be made over the initial term of the contract that they are
17 entering into.

18 51. Plaintiff is informed and believes and thereupon alleges that the failure of ADT and
19 its dealers to disclose the sum total of all required installment payments due during the initial
20 term of the dealer contracts for burglary monitoring and related services entered into with
21 consumers in this state; the actions of ADT in requiring its authorized dealers to use a contract
22 form which does not provide for disclosure of the sum total of all required installment payments,
23 including increased monthly service charges, during the initial term of the contracts for burglary
24 monitoring and related services with consumers in this state; the actions of ADT of including
25 void liquidated damage provisions in its dealer contracts and in collecting and attempting to
26 collect such liquidated damages and early termination fees from consumers who terminate their
27 dealer contracts prior to the conclusion of the initial contract term; and the actions of ADT of
28 unilaterally raising the contract monthly service charge to consumers during the initial contract

term, failing to disclose and failing to require its dealers to disclose the amount of the increase in the monthly service charge at the inception of the contract, attempting to collect that increased monthly fee, and deceptively presenting the contract rate and cost information on the contract forms; as alleged in paragraphs 34 through 48 above, are unfair and unlawful business acts and practices, are acts and practices in violation of sections 1803.3 and 1671(d) of the Civil Code and section 7599.54 of the Business and Professions Code, and are therefore acts of unfair competition in violation of section 17200 of the Business and Professions Code of the State of California. Defendant is liable pursuant to section 17206 of the Business and Professions Code to pay a civil penalty of up to two thousand, five hundred dollars (\$2,500.00) per violation per day.

FIFTH CAUSE OF ACTION

(Business and Professions Code Section 17536 – Dealer Contracts)

52. Plaintiff realleges and incorporates by reference as though set forth in full herein Paragraphs 33 through 50 of this Complaint.

53. Plaintiff is informed and believes and thereupon alleges that the failure of ADT and its dealers to disclose the sum total of all required installment payments due during the initial term of the dealer contracts for burglary monitoring and related services entered into with consumers in this state; the actions of ADT in requiring its authorized dealers to use a contract form which does not provide for disclosure of the sum total of all required installment payments, including increased monthly service charges, during the initial term of the contracts for burglary monitoring and related services with consumers in this state; the actions of ADT and its dealers of failing to conspicuously disclose to consumers the liquidated damage and early termination fee provisions in its dealer contracts and in collecting and attempting to collect such liquidated damages and early termination fees from consumers who terminate their dealer contracts prior to the conclusion of the initial contract term; and the actions of ADT of unilaterally raising the contract monthly service charge to consumers during the initial contract term, failing to disclose and failing to require its dealers to disclose the amount of the increase in the monthly service charge at the inception of the contract, attempting to collect that increased monthly fee, and

1 deceptively presenting the contract rate and cost information on the contract forms as alleged in
 2 paragraphs 33 through 50 above, constitutes false and misleading advertising, in violation of
 3 section 17500 of the Business and Professions Code of the State of California. Defendant is
 4 liable pursuant to section 17536 of the Business and Professions Code to pay a civil penalty of
 5 up to two thousand, five hundred dollars (\$2,500.00) per violation per day.

6 SIXTH CAUSE OF ACTION

7 (Business and Professions Code Section 17203 – Dealer Contracts)

8 54. Plaintiff realleges and incorporates by reference as though set forth in full herein
 9 paragraphs 33 through 50 and 53 of this Complaint.

10 55. Plaintiff is informed and believes and thereupon alleges that the actions of ADT as
 11 alleged in paragraphs 33 through 50 and 53 above, are unfair and unlawful business acts and
 12 practices, and are therefore acts of unfair competition in violation of sections 17200, 17203, and
 13 17206 of the Business and Professions Code of the State of California. Pursuant to section
 14 17203 of the Business and Professions Code, Defendant should be ordered to pay restitution to
 15 all victims of its unlawful and unfair business practices, to state the sum total of all monthly
 16 service charges required to be paid during the initial term of years of each contract entered into
 17 with California consumers, to discontinue all contract provisions providing for liquidated
 18 damages and termination fees payable by consumers, to cease collecting liquidated damages and
 19 termination fees from consumers, and to cease raising monthly fees of consumers who are still in
 20 the initial term of their contracts with Defendant, unless at the time the contract is executed by
 21 the consumer, the proposed future increase in monthly fees is disclosed, conspicuously in
 22 writing, to each consumer, and is included in the sum of the total of all monthly service charges
 23 required to be paid over the initial term of each contract.

24 SEVENTH CAUSE OF ACTION

25 (Business and Professions Code Section 17206)

26 56. Plaintiff realleges and incorporates by reference as though set forth in full herein
 27 paragraphs 33 through 50 and 53 of this Complaint.

28 57. Plaintiff is informed and believes and thereupon alleges that contract form numbers

1 F5124-00(Rev.5-02) and F5124-01(rev. 08/04) which ADT requires its dealers to use in
 2 contracts with California consumers must contain the notice required by section 1689.7(a)(1) of
 3 the Civil Code pertaining to the consumer's right to cancel the contract within three business
 4 days. This notice must be "in immediate proximity" to the space reserved for the consumer's
 5 signature. Plaintiff alleges upon information and belief that this notice on the above mentioned
 6 contract form numbers is not in immediate proximity to the space reserved for the consumer's
 7 signature. Plaintiff further alleges that contracts entered into between ADT authorized dealers
 8 and California consumers since April of 2002 for burglary monitoring and related services, do
 9 not comply with Civil Code section 1689.7(a)(1).

10 58. Plaintiff is informed and believes and thereupon alleges that the failure of ADT and
 11 its authorized dealers to comply with Civil Code section 1689.7(a)(1) in its dealing with
 12 California consumers as alleged in paragraph 57 above, are unfair and unlawful business acts and
 13 practices, and are therefore acts of unfair competition in violation of sections 17200, 17203, and
 14 17206 of the Business and Professions Code of the State of California. Pursuant to Civil Code
 15 section 1689.7(a)(1) and section 17203 of the Business and Professions Code, Defendant should
 16 be ordered to cancel all dealer contracts with consumers who are presently in the collection
 17 process or who have been in the collection process at any time since April of 2002 and refund all
 18 moneys collected from such consumers in excess of the contract price of the monitoring services
 19 actually provided to such consumers before their monitoring service was canceled. Further,
 20 ADT should be ordered to require its dealers to use contracts which comply with the
 21 requirements of Civil Code section 1689.7(a)(1) and other provisions of the California Home
 22 Solicitation Sales Act.

23 EIGHTH CAUSE OF ACTION

24 (Business and Professions Code Section 17206 - TILA)

25 59. Plaintiff realleges and incorporates by reference as though set forth in full herein
 26 paragraphs 8 through 27, 33 through 50 and 53 of this Complaint.

27 60. Plaintiff is informed and believes and thereupon alleges that the vast majority of the
 28 contracts for burglary monitoring and related services executed between ADT and consumers

1 (direct contracts) and between ADT and consumers through its authorized dealers (dealer
2 contracts) since January of 2002, require more than four installment payments by the consumer
3 during the initial term of each contract.

4 61. Plaintiff is informed and believes and thereupon alleges that the aforementioned
5 contracts, to the extent that they require more than four installment payments, are credit sales
6 pursuant to 15 USC §1602(g) and 12 CFR § 226.2(a)(16).

7 62. Plaintiff is informed and believes and thereupon alleges that pursuant to 15 USC
8 §1638(a)(6) and 12 CFR § 226.18(g), ADT is required to disclose on its contracts with
9 consumers the payment schedule, including the number, amounts, and timing of payments (due
10 dates or period of payments).

11 63. Plaintiff is informed and believes and thereupon alleges that pursuant to 15 USC
12 §1638(a)(7) and 12 CFR § 226.18(j), ADT is required to disclose on its contracts with consumers
13 the total sale price (the total of the cash price of the services, additional charges, and the finance
14 charge, if any) using that term, and a descriptive explanation such as ``the total price of your
15 purchase on credit, including your downpayment of \$----."

16 64. Plaintiff is informed and believes and thereupon alleges that pursuant to 12 CFR §
17 226.18(l), ADT is required to disclose on its contracts with consumers any dollar or percentage
18 charge that may be imposed before maturity due to a late payment.

19 65. Plaintiff is informed and believes and thereupon alleges that pursuant to 12 CFR §
20 226.18(p), ADT is required to disclose on its contracts with consumers a statement that the
21 consumer should refer to the appropriate contract document for information about nonpayment
22 and default.

23 66. Plaintiff is informed and believes and thereupon alleges that pursuant to 12 CFR §
24 226.17, ADT was and is required to make the disclosures required by section 216.18 clearly and
25 conspicuously in writing, grouped together, segregated from everything else, and not containing
26 any information not directly related to the required disclosures.

27 67. Plaintiff is informed and believes and thereupon alleges that the Defendant has failed
28 during the period encompassed by this Complaint to make the disclosures to consumers as

1 outlined in paragraphs 62 through 66 above.

2 68. Plaintiff is informed and believes and thereupon alleges that the actions of Defendant
3 as set forth in paragraphs 60 through 67 are unlawful and unfair business acts and practices in
4 violation of section 17200 of the Business and Professions Code of the State of California.
5 Defendant is liable pursuant to section 17206 of the Business and Professions Code to pay a civil
6 penalty of up to two thousand, five hundred dollars (\$2,500.00) per violation per day.

7 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

8 A. That Defendant pay civil penalties of not less than five million dollars according to
9 law;

10 B. That Defendants be preliminarily and permanently enjoined from engaging in the
11 unlawful, unfair and fraudulent business practices described in this Complaint;

12 C. That Defendants be preliminarily and permanently enjoined from engaging in the
13 violations of section 17500 of the California Business and Professions Code as described in this
14 Complaint;

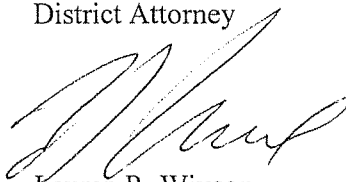
15 D. That Defendants make restitution to all consumers from whom they have collected
16 early contract termination fees; and

17 E. That Defendants make restitution to all consumers from whom they have collected
18 monthly charges during any initial term which exceed the monthly charge set forth on the
19 contract as the monthly contract charge at the time the contract was executed; and

20 F. That Plaintiff have such other further relief as to the court may seem just and proper.

21 DATED: 2/25/08
22 At Martinez, California.

Respectfully submitted,
ROBERT J. KOCHLY
District Attorney

23
24 
25 Lauren R. Wixson
26 Deputy District Attorney
27
28

PROOF OF SERVICE

I, Robin Hammond, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 South Hope Street, Los Angeles, California 90071-2899. On April 25, 2008, I served the within documents:

NOTICE OF REMOVAL OF DEFENDANT ADT
SECURITY SERVICES, INC.

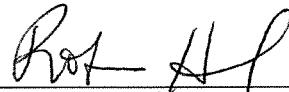
☒ I caused the personal service of the above-listed document(s) by requesting that an agent or employee of Nationwide Legal, Inc. deliver to the office of the recipient named below, either by handing the document(s) to the recipient or by leaving the document(s) with the receptionist or other person apparently in charge of the recipient's office.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Robert J. Kochly, District Attorney
County of Contra Costa
Lauren R. Wixson, Deputy District Attorney
627 Ferry Street
Martinez, CA 94553-0125
Phone: (925) 646-4532
Fax: (925) 646-4683

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on April 25, 2008, at Los Angeles, California.



Robin Hammond